

37 Am. Jur. 2d Fraud and Deceit § 79

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Fraud and Deceit

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IV. False Representations

B. Necessity that Representation Be of Fact; Opinions

4. Commendatory Trade Talk; Promotion and “Puffery”

§ 79. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Fraud](#)  11

Trial Strategy

[Liability of Product Endorser for Personal Injury Caused by Defective Product, 29 Am. Jur. Proof of Facts 149](#)

Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 221](#) (Instruction to jury—Commendatory trade talk as mere expressions of opinion)

It is a broad generalization that commendatory language is not construed as importing a representation upon which a charge of fraud may be based.¹ Applying this principle to the factual business transaction in which the question most often arises, the rule is well settled that mere general commendations of property sought to be sold,² commonly known as “sales talk,”³ “trade talk,”⁴ “dealer’s talk,”⁵ “seller’s statements,”⁶ “sales propaganda,”⁷ “promotion,”⁸ or “puffing” or “puffery,”⁹ do not amount to actionable misrepresentations where the parties deal at arm’s length¹⁰ and have equal means of information and are equally qualified to judge the value of the property sold.¹¹ To such statements, the maxim of “caveat emptor” applies.¹²

Observation:

In determining whether a statement is puffery for negligent misrepresentation purposes, the context matters; the relative expertise of the speaker and the listener can be a critical factor, along with the size of the audience.¹³

CUMULATIVE SUPPLEMENT

Cases:

Statements made in manufacturer's advertisements for diesel engine vehicle, regarding the "high-quality" and "safety" of its vehicles, the vehicle's "clean diesel" engine, and the vehicle's "more efficient combustion" and improved "performance," and stating that the vehicle's engine generated "at least 90% less nitrogen oxide and particulate emissions when compared to previous-generation diesels," constituted non-actionable puffery and, thus, did not support fraud claim. [Counts v. General Motors, LLC, 237 F. Supp. 3d 572 \(E.D. Mich. 2017\)](#).

Marketing statements by company that sold memberships in personalized healthcare program, that program would provide "exceptional" doctors, care, and results, and that affiliated doctors were "finest national specialists" and a "fraternity of some of the nation's finest physicians," were mere puffery and not actionable as fraudulent misrepresentations or misleading advertising by member who was allegedly injured due to medical malpractice by program physician; status of being the "finest" or the "best" was a matter of opinion, and statements describing what made an "exceptional doctor" were statements of opinion concerning such things as credentials and reputation. [Fla. Stat. Ann. § 817.40\(5\). MDVIP, Inc. v. Beber, 222 So. 3d 555 \(Fla. 4th DCA 2017\)](#).

While determining whether a statement is puffery for purposes of a fraudulent representation claim is usually a question of fact it can at times be a question of law, and courts should apply the usual summary judgment standard to figure out which label fits more closely in a given case. [W.S.A. 100.18. United Concrete & Const., Inc. v. Red-D-Mix Concrete, Inc., 2013 WI 72, 836 N.W.2d 807 \(Wis. 2013\)](#).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Lefebvre Intergraphics, Inc. v. Sanden Mach. Ltd., 946 F. Supp. 1358, 34 U.C.C. Rep. Serv. 2d 385 \(N.D. Ill. 1996\) \(applying Illinois law\); Constance v. B.B.C. Development Co., 25 S.W.3d 571 \(Mo. Ct. App. W.D. 2000\); Reich v. Mitrani Plasterers Co., Inc., 268 A.D.2d 256, 701 N.Y.S.2d 368 \(1st Dep't 2000\); Tate v. Colony House Builders, Inc., 257 Va. 78, 508 S.E.2d 597 \(1999\).](#)
As to remedies of buyers for seller's fraud as breach of a warranty, see [Am. Jur. 2d, Sales §§ 1075 to 1084](#).
- ² [Atlantic Nat. Bank of Boston v. Korrick, 29 Ariz. 468, 242 P. 1009, 43 A.L.R. 1184 \(1926\); Thomas v. Mississippi Val. Gas Co., 237 Miss. 100, 113 So. 2d 535 \(1959\); Castleman v. Stryker, 107 Or. 48, 213 P. 436 \(1923\).](#)
- ³ [Republic Bank & Trust Co. v. Bear Stearns & Co., Inc., 683 F.3d 239 \(6th Cir. 2012\) \(applying Kentucky law\); Russell v. Wilson, 991 So. 2d 745 \(Ala. Civ. App. 2008\).](#)
- ⁴ [Atlantic Nat. Bank of Boston v. Korrick, 29 Ariz. 468, 242 P. 1009, 43 A.L.R. 1184 \(1926\); Herrill v. Rugg, 114 Cal. App. 492, 300 P. 140 \(1st Dist. 1931\); Tate v. Colony House Builders, Inc., 257 Va. 78, 508 S.E.2d 597 \(1999\).](#)

- ⁵ Presidio Enterprises, Inc. v. Warner Bros. Distributing Corp., 784 F.2d 674 (5th Cir. 1986); King v. Codisco, Inc., 217 Ga. App. 704, 458 S.E.2d 881 (1995); Dyer v. Caldcleugh and Powers, 392 S.W.2d 523 (Tex. Civ. App. Corpus Christi 1965), writ refused n.r.e., (Jan. 26, 1966).
- ⁶ Sorrells v. Clifford, 23 Ariz. 448, 204 P. 1013 (1922); Castleman v. Stryker, 107 Or. 48, 213 P. 436 (1923); Patterson v. Bushong, 196 S.W. 962 (Tex. Civ. App. Fort Worth 1917), writ refused, (June 5, 1918).
- ⁷ Constance v. B.B.C. Development Co., 25 S.W.3d 571 (Mo. Ct. App. W.D. 2000).
- ⁸ Trans-Spec Truck Service, Inc. v. Caterpillar Inc., 524 F.3d 315, 70 Fed. R. Serv. 3d 568, 65 U.C.C. Rep. Serv. 2d 633 (1st Cir. 2008) (applying Massachusetts law).
- ⁹ Republic Bank & Trust Co. v. Bear Stearns & Co., Inc., 683 F.3d 239 (6th Cir. 2012) (applying Kentucky law); Shroyer v. New Cingular Wireless Services, Inc., 622 F.3d 1035 (9th Cir. 2010) (applying California law); Russell v. Wilson, 991 So. 2d 745 (Ala. Civ. App. 2008); Hanson-Suminski v. Rohrman Midwest Motors, Inc., 386 Ill. App. 3d 585, 325 Ill. Dec. 461, 898 N.E.2d 194 (1st Dist. 2008); Flegles, Inc. v. TruServ Corp., 289 S.W.3d 544 (Ky. 2009); Harrison v. Avalon Properties, LLC, 246 S.W.3d 587 (Tenn. Ct. App. 2007).
- ¹⁰ Republic Bank & Trust Co. v. Bear Stearns & Co., Inc., 683 F.3d 239 (6th Cir. 2012) (applying Kentucky law); Morris v. Budd, 226 Ga. App. 455, 486 S.E.2d 682 (1997); Hodson v. Wells & Dickey Co., 31 N.D. 395, 154 N.W. 193 (1915); Castleman v. Stryker, 107 Or. 48, 213 P. 436 (1923); Stewart v. Larkin, 74 Wash. 681, 134 P. 186 (1913).
- ¹¹ Republic Bank & Trust Co. v. Bear Stearns & Co., Inc., 683 F.3d 239 (6th Cir. 2012) (applying Kentucky law); Sorrells v. Clifford, 23 Ariz. 448, 204 P. 1013 (1922); Landis v. Rodgers, 1926 OK 735, 119 Okla. 233, 249 P. 398 (1926); Tate v. Colony House Builders, Inc., 257 Va. 78, 508 S.E.2d 597 (1999).
- ¹² Thomas v. Mississippi Val. Gas Co., 237 Miss. 100, 113 So. 2d 535 (1959); Molloy v. Brown, 364 Pa. 92, 70 A.2d 336 (1950).
As to the effect of fraud, generally, on “caveat emptor,” see § 81.
- ¹³ Alpine Bank v. Hubbell, 555 F.3d 1097 (10th Cir. 2009).